



SPW

Docket No.: 1567.1063

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Sang-jin KIM

Serial No. 10/743,910

Group Art Unit: 1745

Confirmation No. 9164

Filed: December 24, 2003

Examiner: Julian A. Mercado

For: NEGATIVE ACTIVE MATERIAL FOR RECHARGEABLE LITHIUM BATTERY AND
METHOD OF PREPARING SAME

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed May 10, 2007 in the above-identified application, having a shortened period for response set to expire on June 10, 2007, the following remarks are provided.

At page 2 of the Office Action, the Examiner required a restriction between the following groups:

- I. Claims 1 – 9 and 18 – 29, drawn to a product, classified in class 429, subclass 213;
and
- II. Claims 10 – 17, drawn to the process of making, classified in class 29, subclass 623.5.

In response, Applicants elect **Group I, claims 1 – 9 and 18 – 29**, with traverse.

The requirement of restriction is traversed on the grounds that the two groups so closely related that all of the claims should remain in the same application. The elected claims 1 – 9 and 18 - 29 are directed to a negative active material of a rechargeable lithium battery, and claims 10 - 17 are drawn to a method of making a negative active material of a rechargeable lithium battery. There have been no references cited to show any necessity for requiring restriction and, in fact, it is respectfully submitted that the Examiner would find references containing both method and product claims in the same field of technology. While it is noted that

the Examiner has identified different classifications for the product and method claims, it is respectfully submitted that classification is not conclusive on the question of restriction. It is respectfully submitted, moreover, that evaluation of both sets of claims would not provide an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter recited by the Group 10 - 17 claims by filing a divisional application.

MPEP §803 sets forth the criteria for restriction between patentably distinct inventions. (A) indicates that the inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05-806.05(i)); and (B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). The Examiner has not set forth why there would be a serious burden if restriction is required.

Conclusion

In view of the foregoing arguments and remarks, examination of all of the claims of the application is respectfully requested.

If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 503333.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

STEIN, MCEWEN & BUI, LLP

Date: June 1, 2007

By: 

Ralph T. Webb
Registration No. 33,047

1400 Eye St., NW., Ste 300
Washington, D.C. 20005
Telephone: (202) 216-9505
Facsimile: (202) 216-9510